Supreme Court
FILED

No. 031659 JUN 14 2004

In The

Supreme Court of the United States

JAMES GILBERT BERRY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Petition for Writ of Certiorari

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QUESTION PRESENTED FOR REVIEW

The following question is presented by the Petition for Writ of Certiorari:

Whether Berry's Speedy Trial rights were violated?

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PETITION FOR WRIT OF CERTIORARI

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

James Gilbert Berry, petitioner herein, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit, reproduced in the Appendix, herein, at pages 1a-3a., and affirmed by a refusal to grant rehearing, reproduced in the Appendix, herein, at page 7a.

OPINIONS BELOW

The opinion of the United States District Court for the Western District of Virginia at Harrisonburg, Case Number 5:02CR30046 is unreported and reproduced in the Appendix, herein, at pages 8a-19a. Subsequent to his conviction, Berry appealed to the United States Court of Appeals for the Fourth Circuit, but his claims were rejected and on January 21, 2004, his convictions were affirmed in an unpublished opinion, United States v. James Gilbert Berry, Case No. 03-4352, reproduced in the Appendix, herein, at pages 1a-3a.. Berry moved for rehearing and rehearing was denied on March 17, 2004 reproduced in the appendix herein at page 7a.

JURISDICTION

This Court has jurisdiction pursuant to 18 U.S.C.§ 3173, 28 U.S.C. §1254 and Amendment VI of the Constitution of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following constitutional and statutory provisions are reproduced in the appendix herein:

U.S. Constitution U.S. Con. 6th Amd. (1791) at page 20a.

28 U.S.C. § 1254 - Courts of appeals; certiorari; certified questions at page 20a

18 U.S.C. § 3161 - Time limits and exclusions at page 21a

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21 U.S.C. § 841 - Prohibited acts A at page 34a

21 U.S.C. § 846 - Attempt and conspiracy at page 48a

STATEMENT OF THE CASE

On June 13, 2002, Berry, along with twelve other individuals, was indicted for conspiracy to distribute 500 grams or more of methamphetamine in violation of 21 U.S.C. Sections 841(a)(1) and 846. Several of the other co-conspirators, in separate counts of the same indictment were charged with the illegal possession of a firearm in furtherance of drug trafficking.

Berry was arraigned on July 8, 2002 and plead not guilty. The Court entertained Berry's motion for bond, granted the motion, set a corporate surety bond of $25,000, and placed Berry on home detention pending trial The trial date at that time was yet to be determined.

The government appealed the bond decision, based on the pretrial service recommendation for detention. On July 22, 2002, the Court revoked Berry's bond, ruling that even though the Court believed Berry would show up for trial, the Court believed him to be a danger to the community and that no condition or combination of conditions would be sufficient to assure public safety.

The trial of the case was scheduled for August 21-23, 2002 and was continued to October 30, 2002 through November 1, 2002, over Berry's objection, on the motion of one of the co-defendants, David Travis Fitzgerald.

On October 11, 2002, the United States filed a motion for a continuance on the grounds that the Assistant United States Attorney suffered a death in his

family and would need additional time to prepare the case for trial. Counsel for David Travis Fitzgerald and counsel for James Gilbert Berry objected to the continuance.

On October 21, 2002, Judge Samuel G. Wilson conducted a telephone conference among counsel for the objecting defendants and the United States. Judge Wilson orally granted the motion, but he did not enter an oral or a written order, and there is no record of the discussion that took place during the conference or the specific findings Judge Wilson made in granting the continuance.

On November 19, 2002, Judge Wilson entered an order reassigning the case to the docket of Judge James P. Jones. On November 21, 2002, Judge Jones, not Judge Wilson, entered an order of continuance, *nunc pro tunc*, finding that "a failure to grant the motion would deny the United States reasonable time necessary for effective preparation, taking into account the exercise of due diligence." Judge Jones continued the case until January 21, 2003. (Appendix herein at page 5a).

On January 14, 2003, Berry filed a motion, pursuant to 18 U.S.C. 3162(a)(2) to dismiss the prosecution of the charges and the indictment. On January 17, 2003 Berry filed an amended motion to dismiss on the grounds that granting of the government's Motion for Continuance violated Berry's Speedy Trial rights under 18 U.S.C., Section 3161.

On January 21, 2003, the Court requested argument on Berry's motion to dismiss. The Court took the matter under advisement and did not make a finding until after the case against Berry was prosecuted. On January 22, 2003, after instructing the jury, the Court entertained argument on Berry's motion to dismiss.

The Court denied the motion, finding that the continuance was justifiable due to a death in the family of the Assistant United States Attorney. The Court further found that there was no non-excludable time in excess of seventy days from the initial appearance of the last defendant until the trial began on January 21, 2003.

The jury returned a guilty verdict on the charge of conspiracy and found that the government proved beyond a reasonable doubt that the object of the conspiracy was to possess, with intent to distribute, 500 grams or more of a mixture of methamphetamine.

At the conclusion of the trial, Berry renewed his objections to the rulings on the motions.

At the sentencing hearing on April 11, 2003, the Court adopted the presentence report as his findings in the case: that Berry had a total offense level of 41, a criminal history category of 5 resulting in a custody range of 360 months to life. Accordingly, the Court sentenced Berry to 360 months and supervised release for five years on conditions and the payment of certain penalties.

REASONS FOR GRANTING CERTIORARI

In this appeal, Berry contends that the delay between the date he was taken into federal custody and the date of his trial violated his Speedy Trial rights due to the granting of an improper continuance.

The docket entries show that Berry was arrested on June 13, 2002 and arraigned on June 25, 2002. He was released on bond on July 8, 2002. Though Berry had committed no act in violation of the conditions of his release, his bond was revoked on July 22, 2002 on appeal by the government.

All thirteen individuals named in the indictment were to be tried by a jury August 21 through August 23, 2002.

The trial of the case was continued twice over Berry's objection. On the motion of one of the co-defendants, David Travis Fitzgerald, it was continued from the August trial date to October 30, 2002 through November 1, 2002.

On October 11, 2002, the United States filed a motion for a continuance on the grounds that the Assistant United States Attorney suffered a death in his family and would need additional time to prepare the case for trial.

On October 21, 2002, Judge Samuel G. Wilson conducted a telephone conference among counsel for the objecting defendants and the United States. Judge Wilson granted the motion, but he did not enter an oral

or written order in compliance with the Speedy Trial Act, nor was a date certain set for trial.

In addition to the failure to enter an order of continuance pursuant to the Act, long after the October trial date had come and gone, on November 21, 2002, Judge Jones, not Judge Wilson, entered an order of continuance, finding that "a failure to grant the motion would deny the United States reasonable time necessary for effective preparation, taking into account the exercise of due diligence." Despite the fact that Judge Jones had not heard the government's motion in order to properly make any findings as to its propriety, he continued the case until January 21, 2003.

The improper granting of the government's motion for continuance was highly prejudicial to Berry. The granting of continuances continuing the August 21, 2002 and October 30, 2002 cases allowed the government to keep applying pressure to co-defendants until they were willing to change their previous statements, and it further allowed the government to locate and solicit testimony from Judy White, a witness who only testified in return for complete immunity, a circumstance that was not based on the factual elements of co-conspirator White's criminal acts and a subsequent motion for substantial assistance.

Three government witnesses, Fitzgerald, Lam and White testified against Berry. On January 6, 2003, after two continuances and only a few weeks prior to trial, co-defendant Fitzgerald told Officer Martin that he and Berry were at Lam's to buy methamphetamine. This statement directly contradicted Fitzgerald's prior

statement. The first time Lam told the officers anything about Fitzgerald and Berry was December 6, 2002. The government also located Judy White and provided her with incentives to testify against Berry only weeks prior to the January 21, 2003 trial date, and after the second continuance. The Government was only able to assemble these self-serving witnesses after it had already violated Berry's right to a speedy trial.

The Speedy Trial Act, which makes effective the Sixth Amendment, requires that a defendant is entitled to a dismissal of the charges against him if he is not brought to trial within seventy days of his initial appearance. (Appendix at pages 20a and 21a).

The Act further states in pertinent part that, No "period of delay resulting from a continuance granted by any judge...on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial...shall be excludable unless the court sets forth, in the record of the case, either orally or in writing, its reasons for finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial." 18 U.S.C. § 3161 (Appendix page 27a). The Speedy Trial rights are specific. The grounds for extending any period of time requires oral or written findings set forth in the record. No such findings exist with respect to the October 30, 2002 continuance.

As Judge Jones acknowledged, the docket entries show that the case was set for August 16, 2002 and then reset to begin on October 30, 2002. On October 11, 2002, the government filed a motion for

continuance, but "there is no docket entry continuing the case, nothing. There's no docket entry or order entered with respect to the October 30th trial date. It simply did not occur."

When Judge Jones was assigned the case on November 19, 2002, he reviewed the file, saw the motion for continuance but saw no order. The trial date had already passed. He entered an order on November 21, 2002, setting the new trial date of January 21, 2003. This order, however, did not merely set a new trial date for the case but purports to remedy, *nunc pro tunc*, the failure of the district court to explicitly enter an order, either oral or written, setting forth the district court's reasons for finding that the ends of justice would be served by the granting of such continuance. (Appendix herein at page 5a).

As pointed out by the court in U.S. v. Keith, 42 F.3d 434 (4th Cir. 1994), citing U.S. v. Carey, 746 F.2d 228, 230 (4th Cir. 1984), a district court may not grant an ends of justice continuance *nunc pro tunc*. An ex post facto order may only be entered as late as the filing of a defendant's motion to dismiss "if it is clear from the record that the court conducted the mandatory balancing contemporaneously with the granting of the continuance," considering all of the factors identified by the statute when the continuance was granted. U.S. v. Keith, 42 F.3d 434 (4th Cir. 1994), citing United States v. Doran, 882 F.2d 1511 (10th Cir. 1989). Judge Jones' remedial continuance order did not meet the procedural requirements of the Act.

Nevertheless, the district court dismissed Berry's motion on other grounds. It refused to decide whether the lack of the entry of an oral or written order by the judge who actually heard the motion should result in a dismissal. Instead Judge Jones relied on United States v. Jarrell, 147 F.3d 315, 316 (4th Cir. 1998) and United States v. Walker, 960 F.2d 409, 414 (5th Cir. 1992) in holding that there was no non-excludable time in excess of 70 days from the initial appearance of the last defendant until Berry's trial on January 21, 2003. Judge Jones relied on these cases for the proposition that "delays from pretrial motions will toll the trial clock indefinitely" and that in a case involving several defendants, time excludable for one is excludable for all. Therefore, Judge Jones reasoned that because one of Berry's co-defendants filed a pretrial motion for discovery on July 9, 2002 which was not decided until December 20, 2002, that period of time is excludable such that there was no delay in the trial of the case beyond the 70-day period.

Berry argues that 18 U.S.C. §3161(h)(1)(F) (Appendix herein at page 25a) does allow for exclusion of time due to pretrial motions, even though this section does not state that "delays from pretrial motions will toll the trial clock indefinitely." Instead, this section allows for the "delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other **prompt** [emphasis added] disposition of, such motion.

As the district court pointed out, two defendants filed pretrial discovery motions - one of which was not decided until December 30, 2002. What the district court failed to recognize is that December 30, 2002 is

two months past the trial date for which no continuance order was entered either orally or in writing on the docket. Had the October trial date not been continued, this uncomplicated discovery motion would have been decided prior to the October trial date.

Berry was held in federal custody continuously from July 22, 2002 until January 22, 2003. He filed no motions to toll the statute, and he objected to both continuances. He was severely prejudiced by the continuances. The government was not ready to try its case prior to the October trial date. The trial should have proceeded in August or October since the Speedy Trial rules are not intended to operate to allow the government arbitrary extensions so that it can prepare its case. As tragic as the death of the prosecutor's father was, it occurred three weeks in advance of the trial date, and the continuance against Berry's interests was not necessary.

Berry's position is not intended to be a hyper-technical assault on a government prosecution. The speedy trial rules are a statutory safeguard which give clarification to a Constitutional protection. It is well-recognized that the government can avail itself of substantial advantages through the delay of criminal cases after arrest and prior to trial. By offering escalating inducements, co-defendants may be encouraged to offer changed or even untruthful testimony.

In this case, Travis Fitzgerald accepted a plea agreement after the October trial date and testified in direct contradiction of his prior statements. Unlike Martha Stewart, he received a sentence reduction rather than a new felony charge for this reversal.

Likewise, Judy White, who was not going to be a witness at the October trial, was produced to prove Berry's guilty, even though her testimony was not deemed to be trustworthy enough to form the basis of her own criminal responsibility for the crimes which she claimed to have committed since she was never charged for the crimes in the conspiracy.

This position by the government appears to be contrary to the general position of the United States which does not allow escape from responsibility for the commission of crime, unless such relief is based on facts which would establish her innocence.

In short, this trial would have been a far different and more fair trial had it taken place in October. The speedy trial restrictions seek to insure fairer trails by removing factors which were present in this case after the October trial date.

Berry was entitled to the benefits of the Speedy Trial Act in all of its specific detail. This case is not about humane relief for an attorney who has lost a parent, but really centers around necessary findings and necessary orders which establish the basis for a continuance of a straight-forward conspiracy which had been investigated for years, had been pending for months and already continued once, and was still nineteen days away at the time of the motion.

The speedy trial rules are specific and do not depend upon the disposition of co-defendant's motions, which only remained unresolved past October 30 due to the continuance which is contested, but rather these rules should be given meaning by dismissing this prosecution based upon the lack of a proper order in October, 2002, and that fact that a *nunc pro tunc* order has no validity in this case. Absent such a finding the speedy trial rules are of little value in protecting citizen's rights.

The trial court erred in denying his motion to dismiss on Speedy Trial grounds.

CONCLUSION

For the reasons stated, James Gilbert Berry respectfully requests that this Court grant certiorari.

Respectfully submitted,
JAMES GILBERT BERRY

By /s/_____

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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v. No. 03-4352

JAMES GILBERT BERRY,
Defendant-Appellant.

Appeal from the United States District Court for the
Western District of Virginia, at Harrisonburg.
James P. Jones, District Judge.
(CR-02-46)

Submitted: December 19, 2003
Decided: January 21, 2004
[ENTERED: JANUARY 21, 2004]

Before NIEMEYER, WILLIAMS, and TRAXLER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

Joseph A. Sanzone, SANZONE & BAKER, P.C., Lynchburg, Virginia, for Appellant. John L. Brownlee, United States Attorney, Wilham F. Gould, Assistant United States Attorney, Charlottesville, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

James Gilbert Berry was convicted of conspiracy to distribute 500 grams or more of methamphetamine and sentenced to 360 months of imprisonment. On appeal, he raises three issues. For the reasons that follow, we affirm.

First, Berry alleges that the delay between his indictment and trial exceeded seventy days, and thus, his indictment should have been dismissed under the Speedy Trial Act. 18 U.S.C.A. § 3161(c)(1) (West Supp. 2003). This claim fails, however, as the time that his co-defendants' pretrial motions were pending is excluded from the Speedy Trial Act for all defendants in the same action. 18 U.S.C. § 3161(h)(1)(F); United States v. farrell, 147 F.3d 315, 316 (4th Cir. 1998); United States v. Santo, 24 F.3d 618, 622 (4th Or. 1994). Because this time was properly excluded from the calculation, there was no violation of the Act. Henderson v. United States, 476 U.S. 321, 326 (1986).

Second, we do not find that the district court clearly abused its discretion by denying Berry's motion for a mistrial. United States v. Seeright, 978 F.2d 842, 849 (4th Or. 1992). The testimony to which he objected was vague and isolated, and we do not find that the district.; court abused its broad grant of discretion in its ruling on the matter. United States v. Dorlouis, 107 F.3d 248, 257 (4th Cir. 1997),

Finally, we do not find that the district court clearly erred in its calculation of drug quantity for purposes of sentencing. United States v. Randall, 171 F.3d 195, 210(4th Cir. 1999); United States v. McDonald, 61 F.3d 248, 255 (4th Cir. 1995). The amount of drugs attributable to Berry was supported by the record, United States v. Falesbork, 5 F.3d 715, 722 (4th Cir. 1993); United States v. Uwaeme, 975 F.2d

1016, 1019 (4th Cir. 1992),- and Berry has failed to show that the information the district court considered as enumerated in the presentence report was incorrect or unreliable. United States v. Love, 134 F.3d 595, 606 (4th Cir. 1998).

Accordingly, we affirm Berry's conviction and sentence. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

UNITED STATES COURT OF APPEALS
for the Fourth Circuit

[ENTERED: JANUARY 21, 2004]

NO. 034352
CR-02-46

UNITED STATES OF AMERICA
Plaintiff – Appellee

v.

JAMES GILBERT BERRY
Defendant - Appellant

Appeal from the United States District Court for the Western District of Virginia at Harrisonburg

In accordance with the written opinion of this Court filed this day, the Court affirms the judgment of the District Court.

/s/ Patricia S. Connor
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

UNITED STATES OF AMERICA	)
	)
	)
RICHARD RICHIE	)
DAVID T. FITZGERALD	)
JAMES GILBERT BERRY	)
ROGER AYRES,	)
Defendants.	)

Case No. 5:02
CR30046

[ENTERED: NOVEMBER 22, 2002]

ORDER

By James P. Jones
United States District Judge

Upon consideration of a motion of continuance by the United States, the court finds that the ends of justice served by the granting of such continuance outweigh the best interest of the public and the defendants in a speedy trial. The court makes this finding because a failure to grant such a continuance would deny counsel for the movant the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

Accordingly, it is **ORDERED** that the motion of continuance is granted and the trial and the Speedy Trial Act time is continued until January 21, 2003.

ENTER: November 22, 2002

/s/James P. Jones
United States District Judge

A TRUE COPY, TESTE:
JOHN F.CORCORAN, CLERK

BY: K. Dotson
DEPUTY CLERK

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-4352
CR-02-46

UNITED STATES OF AMERICA
Plaintiff - Appellee

v.

JAMES GILBERT BERRY
Defendant - Appellant

[ENTERED: MARCH 17, 2004]

ORDER

Appellant has filed a petition for rehearing.

The Court denies the petition for rehearing.

Entered for a panel comprised of Judge Williams, Judge Niemeyer, and Judge Traxier.

For the Court,

/s/ Patricia S. Connor
CLERK

UNITED STATES DISTRICT COURT
Western District of Virginia

[ENTERED: APRIL 14, 2003]

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed on or After November 1, 1987)

UNITED STATES OF AMERICA

v.

JAMES GILBERT BERRY

Case Number: 5:02CR30046-010

Joseph A. Sanzone
Defendant's Attorney

THE DEFENDANT:

____pleaded guilty to count(s)
____pleaded nolo contendere to count(s)
which was accepted by the court.
__X__was found guilty on count(s) __1__ after a plea of not guilty.

Title & Section
21 USC 846

Nature of Offense
Conspiracy to Distribute Methamphetamine

Date Offense Concluded
3/31/00

Count Numbers
1

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

____ The defendant has been found not guilty on count(s)__
____ Count(s) _____ dismissed on the motion of the United States

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendants Soc. Sec. No. 22923-6079

Defendants Date of Birth.: May 26, 1966

Defendants USM No.: 08744-084

Defendants Residence Address:
173 Ladd Road
Fishersville, Virginia 22939

Defendants Mailing Address:
173 Ladd Road
Fishersville, Virginia 22939

April 11,2003
Date of Imposition of Judgment

Signature of Judicial Officer

Honorable James P. Jones, United States District Judge
Name and Title of Judicial Officer

4/14/03
Date

TRUE COPY, TESTE:
John F. Corcoran, clerk
BY: DEPUTY CLERK

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **360 months**

_X_ The court makes the following recommendations to the Bureau of Prisons:

That the defendant be designated to Butner, North Carolina, or otherwise to the least restrictive facility for which the defendant qualifies within reasonable proximity to Fishersville, Virginia, in order to facilitate visits by family members.

_X_ The defendant is remanded to the custody of the United States Marshal.

____ The defendant shall surrender to the United States Marshal for this district:

_____ at _____ on _____
_____ as notified by the United States Marshal.

____ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

_____ before _____ On _____
_____ as notified by the United States Marshal.
_____ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ _____ to _____ at _____ with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By_____
Deputy U.S Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **five (5) years**

MANDATORY CONDITIONS OF SUPERVISION

1) The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2) The defendant shall not commit another federal, state or local crime.
3) The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

4) The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test w thin 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

___The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

5) If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

_X_The defendant shall not possess a firearm, destructive device, or any other dangerous weapon. (Check, if applicable.)

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the special conditions on the Special Conditions of Supervision page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances .are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

SPECIAL CONDITIONS OF SUPERVISION

While on supervised release, the defendant:

1) Must pay any monetary penalty that is imposed by this judgment in the manner directed by the court;

2) Must not possess a firearm as defined in 18 U.S.C. § 921, including a destructive device, and must reside in a residence free of them;

3) Must submit to warrantless search and seizure of person and property by the probation officer or other law enforcement officer, whenever such officer has reasonable suspicion that the defendant is engaged in criminal activity; and

4) Must participate in a program of testing and treatment for substance abuse as directed by the probation officer, until such time as defendant is released from the program by the officer

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

Assessment	Fine	Restitution
Totals:	**$100.00**	**$1,000.00**

_____ If applicable, restitution amount ordered pursuant to plea agreement

FINE

The above fine includes costs of incarceration and/or supervision in the amount of _____

The defendant shall pay interest on any fine more than $2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

_____ The court has determined that the defendant does not have the ability to pay interest and it is ordered that:.

_____ The interest requirement is waived.

_____ The interest requirement is modified as follows:

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

_X_ Lump sum payment of $ 100.00 due immediately, balance due

____ not later than _____, or

_X_ in accordance with _X_ C, ___ D, or ___ E below; or

___ Payment to begin immediately (may be combined with __ C, ___ D, or ___ E below; or

_____ Payment in monthly (e.g., equal, weekly, monthly, quarterly) installments of $ 25.00 to commence 90 (e.g., 30 or 60 days) after the date of this judgment; or

_____ Payment in _____ (e.g., equal, weekly, monthly, quarterly) installments of $___ over a period of

_____ (e.g., months or years), to commence _____ (e.g., 30 or 6O days) after release from imprisonment to a term of supervision; or

_____ Special instructions regarding the payment of criminal monetary penalties:

Installment schedule is subject to adjustment by the court at any time during the period of imprisonment or supervision, and defendant shall notify the probation officer and the U.S. Attorney of any change in the defendant's economic circumstances that may affect the defendant's ability to pay.

All criminal monetary penalties shall be made payable to the Clerk, U.S. District Court, P.O. Box 1234, Roanoke, Virginia 24006, for disbursement.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of Imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Bureau of Prisons~ Inmate Financial Responsibility Program are to be made to the clerk of the court, unless otherwise directed by the court, the probation officer, or the United States attorney.

The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.

_____ Joint and Several
Defendant Name, Case Number, and Joint and Several Amount:

_____ The defendant shall pay the cost of prosecution.
_____ The defendant shall pay the following court cost(s):

_____ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest (7) penalties, and (8) costs, including cost of prosecution and court costs.

STATEMENT OF REASONS
(Not for Public Disclosure)

X The court adopts the factual findings and guideline application in the presentence report.

OR

___ The court adopts the factual finding and guideline application in the presentence report except (see attachment,

Guideline Range Determined by the Court:

Total Offense Level: **41**
Criminal History Category **V**
Imprisonment Range: **360 months to life**
Supervised Release Range: **At least 5 years**
Fine Range: **$25,000.00** to **$4,000,000.00**

X Fine waived or below the guideline range because of inability to pay.

Total Amount of Restitution:_____

___ Discretionary restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweighs the need to provide restitution to any victims, pursuant to 18 U.S.C. § 3663(a)(1)(B)(ii) (or offenses committed before April 23, 1996, pursuant to 18 U.S.C. § 3663(d)).

___ Restitution pursuant to the mandatory victim restitution provisions is not ordered in this title 18 property offense because the number of identifiable victims is so large as to make restitution impracticable, pursuant to 18 U.S.C. § 3663A(c)(3)(A).

___ Restitution pursuant to the mandatory victim restitution provisions is not ordered in this title 18 property offense because determining complex issues of fact and related to the cause of amount of the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process, pursuant to 18 U.S.C. § 3663A(c)(3)(B).

___ For offenses committed on or after September 13, 1994 but before April 23, 1996 that require the total amount of loss to be stated, pursuant to Chapters 1 09A, 110, 11 OA, and 11 3A of Title 18, restitution is not ordered because the economic circumstances of the defendant do not allow for the payment of any amount of a restitution order, and do not allow for the payment of any or some portion of a restitution order in the foreseeable future under any reasonable schedule of payments.

___ Partial restitution is ordered for the following reason(s):

STATEMENT OF REASONS
(Not for Public Disclosure)

___ The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by the application of the guidelines.

OR

_X_ The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reasons:
In consideration of the factors set forth in 18 U.S.C. § 3553(a) and in particular the nature and circumstances of the criminal conduct, the history and characteristics of the defendant, and the need for the sentence imposed.

OR

____ The sentence departs from the guideline range:

____ upon motion of the government, as a result of defendant's substantial assistance.

____ or the following specific reason(s):

The Constitution of the United States of America
6th Amendment

Right to Speedy Trial, Witnesses, etc. -- In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

UNITED STATES CODE
Title 28 - Judiciary and Judicial Procedure
Part IV Jurisdiction And Venue
Chapter 81 Supreme Court

28 U.S.C. § 1254 - Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

UNITED STATES CODE
Title 18 - Crimes and Criminal Procedure
Part II Criminal Procedure
Chapter 208 Speedy Trial

18 U.S.C. § 3161 - Time limits and exclusions

(a) In any case involving a defendant charged with an offense, the appropriate judicial officer, at the earliest practicable time, shall, after consultation with the counsel for the defendant and the attorney for the Government, set the case for trial on a day certain, or list it for trial on a weekly or other short term trial calendar at a place within the judicial district, so as to assure a speedy trial.

(b) Any information or indictment charging an individual with the commission of an offense shall be filed within thirty days from the date on which such individual was arrested or served with a summons in connection with such charges. If an individual has been charged with a felony in a district in which no grand jury has been in session during such thirty-day period, the period of time for filing of the indictment shall be extended an additional thirty days.

(c)(1) In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs. If a defendant consents in writing to be tried before a magistrate judge on a complaint, the trial shall commence within seventy

days from the date of such consent.

(2) Unless the defendant consents in writing to the contrary, the trial shall not commence less than thirty days from the date on which the defendant first appears through counsel or expressly waives counsel and elects to proceed pro se.

(d)(1) If any indictment or information is dismissed upon motion of the defendant, or any charge contained in a complaint filed against an individual is dismissed or otherwise dropped, and thereafter a complaint is filed against such defendant or individual charging him with the same offense or an offense based on the same conduct or arising from the same criminal episode, or an information or indictment is filed charging such defendant with the same offense or an offense based on the same conduct or arising from the same criminal episode, the provisions of subsections (b) and (c) of this section shall be applicable with respect to such subsequent complaint, indictment, or information, as the case may be.

(2) If the defendant is to be tried upon an indictment or information dismissed by a trial court and reinstated following an appeal, the trial shall commence within seventy days from the date the action occasioning the trial becomes final, except that the court retrying the case may extend the period for trial not to exceed one hundred and eighty days from the date the action occasioning the trial becomes final if the unavailability of witnesses or other factors resulting from the passage of time shall make trial within seventy days impractical. The periods of delay enumerated in section 3161(h) are excluded in computing the time limitations specified

in this section. The sanctions of section 3162 apply to this subsection.

(e) If the defendant is to be tried again following a declaration by the trial judge of a mistrial or following an order of such judge for a new trial, the trial shall commence within seventy days from the date the action occasioning the retrial becomes final. If the defendant is to be tried again following an appeal or a collateral attack, the trial shall commence within seventy days from the date the action occasioning the retrial becomes final, except that the court retrying the case may extend the period for retrial not to exceed one hundred and eighty days from the date the action occasioning the retrial becomes final if unavailability of witnesses or other factors resulting from passage of time shall make trial within seventy days impractical. The periods of delay enumerated in section 3161(h) are excluded in computing the time limitations specified in this section. The sanctions of section 3162 apply to this subsection.

(f) Notwithstanding the provisions of subsection (b) of this section, for the first twelve-calendar-month period following the effective date of this section as set forth in section 3163(a) of this chapter the time limit imposed with respect to the period between arrest and indictment by subsection (b) of this section shall be sixty days, for the second such twelve-month period such time limit shall be forty-five days and for the third such period such time limit shall be thirty-five days.

(g) Notwithstanding the provisions of subsection (c) of this section, for the first twelve-calendar-month period following the effective date of this section as set forth in section 3163(b) of this chapter, the time limit with respect to the period between arraignment and trial imposed by subsection (c) of this section shall be one

hundred and eighty days, for the second such twelve-month period such time limit shall be one hundred and twenty days, and for the third such period such time limit with respect to the period between arraignment and trial shall be eighty days.

(h) The following periods of delay shall be excluded in computing the time within which an information or an indictment must be filed, or in computing the time within which the trial of any such offense must commence:

(1) Any period of delay resulting from other proceedings concerning the defendant, including but not limited to -

(A) delay resulting from any proceeding, including any examinations, to determine the mental competency or physical capacity of the defendant;

(B) delay resulting from any proceeding, including any examination of the defendant, pursuant to section 2902[1] of title 28, United States Code;

(C) delay resulting from deferral of prosecution pursuant to section 2902[1] of title 28, United States Code;

(D) delay resulting from trial with respect to other charges against the defendant;

(E) delay resulting from any interlocutory appeal;

(F) delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion;

(G) delay resulting from any proceeding relating to the transfer of a case or the removal of any defendant from another district under the Federal Rules of Criminal Procedure;

(H) delay resulting from transportation of any defendant from another district, or to and from places of examination or hospitalization, except that any time consumed in excess of ten days from the date an order of removal or an order directing such transportation, and the defendant's arrival at the destination shall be presumed to be unreasonable;

(I) delay resulting from consideration by the court of a proposed plea agreement to be entered into by the defendant and the attorney for the Government; and

(J) delay reasonably attributable to any period, not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisement by the court.

(2) Any period of delay during which prosecution is deferred by the attorney for the Government pursuant to written agreement with the defendant, with the approval of the court, for the purpose of allowing the defendant to demonstrate his good conduct.

(3)(A) Any period of delay resulting from the absence or unavailability of the defendant or an essential witness.

(B) For purposes of subparagraph (A) of this paragraph, a defendant or an essential witness shall be considered absent when his whereabouts are unknown and, in addition, he is attempting to avoid apprehension or prosecution or his whereabouts cannot be determined by due diligence. For purposes of such subparagraph, a defendant or an essential witness shall be considered unavailable whenever his whereabouts are known but his presence for trial cannot be obtained by due diligence or he resists appearing at or being returned for trial.

(4) Any period of delay resulting from the fact that the defendant is mentally incompetent or physically unable to stand trial.

(5) Any period of delay resulting from the treatment of the defendant pursuant to section 2902[1] of title 28, United States Code.

(6) If the information or indictment is dismissed upon motion of the attorney for the Government and thereafter a charge is filed against the defendant for the same offense, or any offense required to be joined with that offense, any period of delay from the date the charge was dismissed to the date the time limitation would commence to run as to the subsequent charge had there been no previous charge.

(7) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and no motion for severance has been granted.

(8)(A) Any period of delay resulting from a continuance granted by any judge on his own motion or at the request of the defendant or his counsel or at the request of the attorney for the Government, if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial. No such period of delay resulting from a continuance granted by the court in accordance with this paragraph shall be excludable under this subsection unless the court sets forth, in the record of the case, either orally or in writing, its reasons for finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.

(B) The factors, among others, which a judge shall consider in determining whether to grant a continuance under subparagraph (A) of this paragraph in any case are as follows:

(i) Whether the failure to grant such a continuance in the proceeding would be likely to make a continuation of such proceeding impossible, or result in a miscarriage of justice.

(ii) Whether the case is so unusual or so complex, due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by this section.

(iii) Whether, in a case in which arrest precedes indictment, delay in the filing of the indictment is caused because the arrest occurs at a time such that it is unreasonable to expect return and filing of the indictment within the period specified in section 3161(b), or because the facts upon which the grand jury must base its determination are unusual or complex.

(iv) Whether the failure to grant such a continuance in a case which, taken as a whole, is not so unusual or so complex as to fall within clause (ii), would deny the defendant reasonable time to obtain counsel, would unreasonably deny the defendant or the Government continuity of counsel, or would deny counsel for the defendant or the attorney for the Government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

(C) No continuance under subparagraph (A) of this paragraph shall be granted because of general congestion of the court's calendar, or lack of diligent preparation or failure to obtain available witnesses on the part of the attorney for the Government.

(9) Any period of delay, not to exceed one year, ordered by a district court upon an application of a party and a finding by a preponderance of the evidence that an official request, as defined in section 3292 of this title, has been made for evidence of any such offense and that it reasonably appears, or reasonably appeared at the time the request was made, that such evidence is, or was, in such foreign country.

(i) If trial did not commence within the time limitation specified in section 3161 because the defendant had entered a plea of guilty or nolo contendere subsequently withdrawn to any or all charges in an indictment or information, the defendant shall be deemed indicted with respect to all charges therein contained within the meaning of section 3161, on the day the order permitting withdrawal of the plea becomes final.

(j)(1) If the attorney for the Government knows that a person charged with an offense is serving a term of imprisonment in any penal institution, he shall promptly -

(A) undertake to obtain the presence of the prisoner for trial; or

(B) cause a detainer to be filed with the person having custody of the prisoner and request him to so advise the prisoner and to advise the prisoner of his right to demand trial.

(2) If the person having custody of such prisoner receives a detainer, he shall promptly advise the prisoner of the charge and of the prisoner's right to demand trial. If at any time thereafter the prisoner informs the person having custody that he does demand trial, such person shall cause notice to that effect to be sent promptly to the attorney for the Government who caused the detainer to be filed.

(3) Upon receipt of such notice, the attorney for the Government shall promptly seek to obtain the presence of the prisoner for trial.

(4) When the person having custody of the prisoner receives from the attorney for the Government a properly supported request for temporary custody of such prisoner for trial, the prisoner shall be made available to that attorney for the Government (subject, in cases of interjurisdictional transfer, to any right of the prisoner to contest the legality of his delivery).

(k)(1) If the defendant is absent (as defined by subsection (h)(3)) on the day set for trial, and the defendant's subsequent appearance before the court on a bench warrant or other process or surrender to the court occurs more than 21 days after the day set for trial, the defendant shall be deemed to have first appeared before a judicial officer of the court in which the information or indictment is pending within the meaning of subsection (c) on the date of the defendant's subsequent appearance before the court.

(2) If the defendant is absent (as defined by subsection (h)(3)) on the day set for trial, and the defendant's subsequent appearance before the court on a bench warrant or other process or surrender to the court occurs not more than 21 days after the day set for trial, the time limit required by subsection (c), as extended by subsection (h), shall be further extended by 21 days.

UNITED STATES CODE
Title 18 - Crimes and Criminal Procedure
Part II Criminal Procedure
Chapter 208 Speedy Trial

18 U.S.C. § 3162 - Sanctions

(a)(1) If, in the case of any individual against whom a complaint is filed charging such individual with an offense, no indictment or information is filed within the time limit required by section 3161(b) as extended by section 3161(h) of this chapter, such charge against that individual contained in such complaint shall be dismissed or otherwise dropped. In determining whether to dismiss the case with or without prejudice, the court shall consider, among

others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of this chapter and on the administration of justice.

(2) If a defendant is not brought to trial within the time limit required by section 3161(c) as extended by section 3161(h), the information or indictment shall be dismissed on motion of the defendant. The defendant shall have the burden of proof of supporting such motion but the Government shall have the burden of going forward with the evidence in connection with any exclusion of time under subparagraph 3161(h)(3). In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of this chapter and on the administration of justice. Failure of the defendant to move for dismissal prior to trial or entry of a plea of guilty or nolo contendere shall constitute a waiver of the right to dismissal under this section.

(b) In any case in which counsel for the defendant or the attorney for the Government

(1) knowingly allows the case to be set for trial without disclosing the fact that a necessary witness would be unavailable for trial;

(2) files a motion solely for the purpose of delay which he knows is totally frivolous and without merit;

(3) makes a statement for the purpose of obtaining a continuance which he knows to be false and which is material to the granting of a continuance; or

(4) otherwise willfully fails to proceed to trial without justification consistent with section 3161 of this chapter, the court may punish any such counsel or attorney, as follows:

(A) in the case of an appointed defense counsel, by reducing the amount of compensation that otherwise would have been paid to such counsel pursuant to section 3006A of this title in an amount not to exceed 25 per centum thereof;

(B) in the case of a counsel retained in connection with the defense of a defendant, by imposing on such counsel a fine of not to exceed 25 per centum of the compensation to which he is entitled in connection with his defense of such defendant;

(C) by imposing on any attorney for the Government a fine of not to exceed $250;

(D) by denying any such counsel or attorney for the Government the right to practice before the court considering such case for a period of not to exceed ninety days; or

(E) by filing a report with an appropriate disciplinary committee.

The authority to punish provided for by this subsection shall be in addition to any other authority or power available to such court.

(c) The court shall follow procedures established in the Federal Rules of Criminal Procedure in punishing any counsel or attorney for the Government pursuant to this section.

UNITED STATES CODE
Title 18 - Crimes and Criminal Procedure
Part II Criminal Procedure
Chapter 208 Speedy Trial

18 U.S.C. § 3173 - Sixth amendment rights

No provision of this chapter shall be interpreted as a bar to any claim of denial of speedy trial as required by amendment VI of the Constitution.

Title 21 - Food and Drugs
Chapter 13 Drug Abuse Prevention And Control
Subchapter I Control And Enforcement
Part D Offenses and Penalties

21 U.S.C. § 841 - Prohibited acts A

(a) Unlawful acts

Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally -

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

(b) Penalties

Except as otherwise provided in section 849, 859, 860, or 861 of this title, any person who violates subsection (a) of this section shall be sentenced as follows:

(1)(A) In the case of a violation of subsection (a) of this section involving -

(i) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

(ii) 5 kilograms or more of a mixture or substance containing a detectable amount of -

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

(iii) 50 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N- (1- (2-phenylethyl) -4- piperidinyl) propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-pheny propanamide;

(vii) 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 1,000 or more marihuana plants regardless of weight; or

(viii) 50 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or

more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment which may not be less than 20 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or $8,000,000 if the defendant is an individual or $20,000,000 if the defendant is other than an individual, or both. If any person commits a violation of this subparagraph or of section 849, 859, 860, or 861 of this title after two or more prior convictions for a felony drug offense have become final, such person shall be sentenced to a mandatory term of life imprisonment without release and fined in accordance with the preceding sentence. Any sentence under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

(B) In the case of a violation of subsection (a) of this section involving -

(i) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

(ii) 500 grams or more of a mixture or substance containing a detectable amount of -

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

(iii) 5 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N- (1- (2-phenylethyl) -4-piperidinyl) propanamide or 10 grams or

more of a mixture or substance containing a detectable amount of any analogue of N-pheny propanamide;

(vii) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 100 or more marihuana plants regardless of weight; or

(viii) 5 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or $2,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment which may not be less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence imposed under this subparagraph shall, in the absence of such a prior conviction, include a term of

supervised release of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a term of supervised release of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

(C) In the case of a controlled substance in schedule I or II, gamma hydroxybutyric acid (including when scheduled as an approved drug product for purposes of section 3(a)(1)(B) of the Hillory J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 2000), or 1 gram of flunitrazepam, except as provided in subparagraphs (A), (B), and (D), such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or $1,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the

provisions of title 18 or $2,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 6 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this subparagraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall a person so sentenced be eligible for parole during the term of such a sentence.

(D) In the case of less than 50 kilograms of marihuana, except in the case of 50 or more marihuana plants regardless of weight, 10 kilograms of hashish, or one kilogram of hashish oil or in the case of any controlled substance in schedule III (other than gamma hydroxybutyric acid), or 30 milligrams of flunitrazepam, such person shall, except as provided in paragraphs (4) and (5) of this subsection, be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall

be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or $500,000 if the defendant is an individual or $2,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 4 years in addition to such term of imprisonment.

(2) In the case of a controlled substance in schedule IV, such person shall be sentenced to a term of imprisonment of not more than 3 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 6 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or $500,000 if the defendant is an individual or $2,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the

absence of such a prior conviction, impose a term of supervised release of at least one year in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment.

(3) In the case of a controlled substance in schedule V, such person shall be sentenced to a term of imprisonment of not more than one year, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or $100,000 if the defendant is an individual or $250,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more convictions of him for an offense punishable under this paragraph, or for a crime under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 2 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or $200,000 if the defendant is an individual or $500,000 if the defendant is other than an individual, or both.

(4) Notwithstanding paragraph (1)(D) of this subsection, any person who violates subsection (a) of this section by distributing a small amount of marihuana for no remuneration shall be treated as provided in section 844 of this title and section 3607 of title 18.

(5) Any person who violates subsection (a) of this section by cultivating a controlled substance on Federal property shall be imprisoned as provided in this subsection and shall be fined any amount not to exceed -

(A) the amount authorized in accordance with this section;

(B) the amount authorized in accordance with the provisions of title 18;

(C) $500,000 if the defendant is an individual; or

(D) $1,000,000 if the defendant is other than an individual; or both.

(6) Any person who violates subsection (a) of this section, or attempts to do so, and knowingly or intentionally uses a poison, chemical, or other hazardous substance on Federal land, and, by such use -

(A) creates a serious hazard to humans, wildlife, or domestic animals,

(B) degrades or harms the environment or natural resources, or

(C) pollutes an aquifer, spring, stream, river, or body of water,

shall be fined in accordance with title 18 or imprisoned not more than five years, or both.

(7) Penalties for distribution. -

(A) In general. -

Whoever, with intent to commit a crime of violence, as defined in section 16 of title 18 (including rape), against an individual, violates subsection (a) of this section by distributing a controlled substance or controlled substance analogue to that individual without that individual's knowledge, shall be imprisoned not more than 20 years and fined in accordance with title 18.

(B) Definition. -

For purposes of this paragraph, the term "without that individual's knowledge" means that the individual is unaware that a substance with the ability to alter that individual's ability to appraise conduct or to decline participation in or communicate unwillingness to participate in conduct is administered to the individual.

(c) Offenses involving listed chemicals

Any person who knowingly or intentionally -

(1) possesses a listed chemical with intent to manufacture a controlled substance except as authorized by this subchapter;

(2) possesses or distributes a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance except as authorized by this subchapter; or

(3) with the intent of causing the evasion of the recordkeeping or reporting requirements of section 830 of this title, or the regulations issued under that section, receives or distributes a reportable amount of any listed chemical in units small enough so that the making of records or filing of reports under that section is not required;

shall be fined in accordance with title 18 or imprisoned not more than 20 years in the case of a violation of paragraph (1) or (2) involving a list I chemical or not more than 10 years in the case of a violation of this subsection other than a violation of paragraph (1) or (2) involving a list I chemical, or both.

(d) Boobytraps on Federal property; penalties; "boobytrap" defined

(1) Any person who assembles, maintains, places, or causes to be placed a boobytrap on Federal property where a controlled substance is being manufactured, distributed, or dispensed shall be sentenced to a term of imprisonment for not more than 10 years and shall be fined not more than $10,000.

(2) If any person commits such a violation after 1 or more prior convictions for an offense punishable under this subsection, such person shall be sentenced to a term of imprisonment of not more than 20 years and shall be fined not more than $20,000.

(3) For the purposes of this subsection, the term "boobytrap" means any concealed or camouflaged device designed to cause bodily injury when triggered by any action of any unsuspecting person

making contact with the device. Such term includes guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, and lines or wires with hooks attached.

(e) Ten-year injunction as additional penalty

In addition to any other applicable penalty, any person convicted of a felony violation of this section relating to the receipt, distribution, manufacture, exportation, or importation of a listed chemical may be enjoined from engaging in any transaction involving a listed chemical for not more than ten years.

(f) Wrongful distribution or possession of listed chemicals

(1) Whoever knowingly distributes a listed chemical in violation of this subchapter (other than in violation of a recordkeeping or reporting requirement of section 830 of this title) shall be fined under title 18 or imprisoned not more than 5 years, or both.

(2) Whoever possesses any listed chemical, with knowledge that the recordkeeping or reporting requirements of section 830 of this title have not been adhered to, if, after such knowledge is acquired, such person does not take immediate steps to remedy the violation shall be fined under title 18 or imprisoned not more than one year, or both.

UNITED STATES CODE
Title 21 - Food and Drugs
Chapter 13 Drug Abuse Prevention And Control
Subchapter I Control And Enforcement
Part D Offenses and Penalties

21 U.S.C. § 846 - Attempt and conspiracy

Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.